Mohamed Fayadh bin Abdul Gaffor & Ors v Liberty Insurance Bhd (formerly known as Uni Asia General Insurance Bhd)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-02(NCvC)(A)-1894–10 OF 2021
KAMALUDIN MD SAID, HASHIM HAMZAH AND WONG KIAN KHEONG JJCA
23 MAY 2024

Civil Procedure — Judgment — Written judgment — Stare decisis — No written judgment by Court of Appeal and Federal Court in previous case — Whether court bound by decisions of Court of Appeal and Federal Court that did not give written judgment

Road Traffic — Insurance — Notice of proceedings — Notice of proceedings under s 96(2)(a) of Road Transport Act 1987 ('the RTA') was served to insurer in first suit — First suit discontinued and defendants filed second suit — Notice of proceedings was not served to insurer in second suit — Whether insurer was not liable under s 96(1) of the RTA to pay for any judgment which might be obtained by defendants against the insured in second suit on sole ground that insurer had no notice of the proceedings in second suit pursuant to s 96(2)(a) of the RTA — Road Transport Act 1987 s 96(1) & (2)(a)

Statutory Interpretation — Interpretation — Interpretation of s 96(1) and (2)(a) of the Road Transport Act 1987 ('the RTA') — Whether pursuant to s 17 of Interpretation Acts 1948 and 1967 the court could give effect to object of s 96(2)(a) of RTA — Interpretation Acts 1948 and 1967 ss 2(1)(a) & 17A

On 28 June 2014, the first defendant who was riding a motorcycle was involved in an accident with a car driven by Mohd Sakri bin Muhamad ('the insured'). The first defendant's solicitor known as Messrs Jega Kumar & Partners ('Messrs JKP') then served a notice pursuant to s 96(2)(a) of the Road Transport Act 1987 ('the RTA') on the insurer of the insured ('the plaintiff') regarding the first defendant's claim against the insured for damages due to the alleged negligence of the insured. The plaintiff had acknowledged receipt of the notice. Subsequently, on 9 July 2018, the first defendant filed the first suit against the insured and to defend the insured from the first suit, the plaintiff appointed Messrs Harjit Singh Sangay & Co ('Messrs HSS'). However, the first suit was discontinued by the first defendant. On 23 May 2020, the first, second and third defendants ('the defendants') filed the second suit. In the second suit, the defendants were represented by Messrs JKP. Messrs

JKP had sent an email on 2 July 2020 to the plaintiff's solicitors which attached the first defendant's notice in the first suit but they did not serve a fresh notice under s 96(2)(a) of the RTA regarding the second suit on the plaintiff. The plaintiff then filed originating summons ('the OS') against the defendants for, inter alia, a declaration that the plaintiff was not liable pursuant to s 96(2)(a) of the RTA to pay any judgment sum which may be obtained by the defendants against the insured in the second suit ('the declaration'). The High Court granted the declaration, hence, the present appeal. The only question of law to be determined was whether the plaintiff was not liable under s 96(1) of the RTA to pay for any judgment which might be obtained by the defendants against the insured in the second suit on the sole ground that the plaintiff had no 'notice of the proceedings' in the second suit pursuant to s 96(2)(a) of the RTA. The resolution of this issue depended on whether the plaintiff had 'notice of the proceedings' in the second suit under s 96(2)(a) of the RTA by way of the first defendant's notice in the first suit. In resisting the present appeal, the plaintiff had relied on, inter alia, the cases of: (a) *Chan Sow Ying v Pacific & Oriental Underwriters (M) Sdn Bhd* [1991] 2 CLJ Rep 408 ('*Chan Sow Ying*'s case'); (b) *Malaysian Motor Insurance Pool (MMIP) (administered by MMIP Services Sdn Bhd) v Jivarathinam a/p Balasubramaniam (sebagai isteri, wakil diri yang sah dan Pentadbir kepada harta pusaka si mati, Sureskumar a/l Sybramaniam)* [2022] MLJU 1089 ('Jivarathinam's case'); and (c) the Court of Appeal's decision and the Federal Court's decision of *Jivarathinam*'s case.

Held, allowing the appeal, dismissing the OS and setting aside the High Court's decision with costs of RM20,000 to be paid by the plaintiff to the defendants here and below (subject to allocatur fee):

(1) As no written judgment had been given in respect of the Court of Appeal's decision and the Federal Court's decision of *Jivarathinam*'s case, from the view point of the stare decisis doctrine, the court was not bound by the said decisions. Therefore, the plaintiff could not rely on the said decisions (see paras 19 & 20).

(2) Even though there was no privity of contract between a claimant and an insurer, by virtue of s 96(1) of the RTA, Parliament had imposed liability ('the insurer's statutory liability') on an insurer to pay a judgment sum obtained by a claimant in a suit against a person insured by the insurer based on the commission of the insured's tort of negligence which had caused loss and/or damage to the claimant in an incident involving a motor vehicle (see para 23).

(3) Section 96(2)(a) of the RTA provided that there could only be an insurer's statutory liability if a claimant could discharge the evidential burden to prove on a balance of probabilities either one of the following two limbs of s 96(2)(a) of the RTA: (a) the claimant had given 'notice of the proceedings' regarding the claimant's suit to the insurer in question

before the commencement of the claimant's suit ('the first limb'); or (b) the claimant had given to an insurer 'notice of the proceedings' with regard to the claimant's suit within seven days from the commencement of the claimant's suit ('the second limb'). The phrase 'notice of the proceedings' in s 96(2)(a) of the RTA must refer to an insurer's knowledge of a claimant's suit which may subsequently gave rise to the insurer's statutory liability under s 96(1) of the RTA (see para 23).

(4) According to s 2(1)(a) of the Interpretation Acts 1948 and 1967 ('the IA'), Part 1 of the IA was applicable in the construction of s 96(2)(a) of the RTA. This was because the RTA had been enacted after 18 May 1967 as understood in s 2(1)(a) of the IA. Section 17A of the IA had provided that in the interpretation of a statutory provision, the court 'shall' prefer a construction which 'would promote the purpose or object underlying' the statute in question. As such, in accordance with s 17A of the IA, the court could give effect to the object of s 96(2)(a) of the RTA and not merely the literal meaning of s 96(2)(a) of the RTA (see para 23).

(5) If: (a) an insurer had knowledge of a claimant's first suit within the meaning of the first limb or the second limb; (b) the claimant's first suit was discontinued and was not heard by the court on its merits for any reason whatsoever; and (c) the claimant subsequently filed a second suit against an insured based on the same material facts as the claimant's first suit, there was no requirement under the second limb for the claimant to inform again the insured regarding the claimant's second suit. This was because the claimant had previously fulfilled the first limb, namely, the insurer already had knowledge of the claimant's suit, be it the claimant's first suit or the claimant's second suit (based on the same material facts of the claimant's first suit) (see para 23).

(6) If the court adopted the interpretation of s 96(2)(a) of the RTA given in *Chan Sow Ying*'s case, *Jivarathinam*'s case and the learned High Court judge in the present appeal by requiring a fresh notice of the claimant's second suit to be served by a claimant on an insurer: (a) this would cause an injustice to claimants and render nugatory the insurer's statutory liability under s 96(1) of the RTA as expressly conferred by Parliament; (b) this was contrary to the principles as propounded in the Court of Appeal case of *Aqmal bin Dakhirrudin v Azhar bin Ahmad & Anor* [2019] MLJU 1554 that the RTA was a 'social legislation' with regard to, among others, an insurer's statutory liability under s 96(1) of the RTA; and (c) the above construction of s 96(2)(a) of the RTA had gone beyond the object of s 96(2)(a) of the RTA and allowed insurers to circumvent the insurer's statutory liability under s 96(1) of the RTA (see para 23).

(7) The court affirmed the decision in the case of *Talasco Insurance Bhd (formerly known as Talasco Insurance Sdn Bhd) v Goh Thiam Hock* [1999] 1 MLJ 179. The court overruled the decision in: (a) *China Insurance Co*

Ltd v Ng Siak Yow & Ors [1963] 1 MLJ 244; (b) *Chan Sow Ying*'s case; and (c) the High Court's judgment in *Jivarathinam*'s case (see para 23).

(8) In view of the court's interpretation of s 96(1) and (2)(a) of the RTA, the learned High Court judge had clearly committed an error of law which: (a) had caused an injustice to the defendants; and (b) warranted appellate intervention in the present appeal. In the present case, by way of the plaintiff's acknowledgement of receipt of the first defendant's notice in the first suit, the plaintiff had actual knowledge of the first suit or any other suit which may be subsequently filed against the insured. In fact, the plaintiff had appointed Messrs HSS to act for the insured in the first suit and Messrs HSS had filed a defence for the insured in the first suit. It was clear that the defendants had fulfilled the first limb of s 96(2)(a) of the RTA. Hence, the High Court should not have granted the declaration in the OS (see paras 25–26).

[Bahasa Malaysia summary

Pada 28 Jun 2014, defendan pertama yang menunggang motosikal telah terlibat dalam kemalangan dengan kereta yang dipandu oleh Mohd Sakri bin Muhamad ('orang yang diinsuranskan'). Peguam cara defendan pertama yang dikenali sebagai Tetuan Jega Kumar & Partners ('Tetuan JKP') kemudian menyampaikan notis menurut s 96(2)(a) Akta Pengangkutan Jalan 1987 ('APJ') kepada penanggung insurans bagi orang yang diinsuranskan ('plaintif') berhubung tuntutan defendan pertama terhadap orang yang diinsuranskan untuk ganti rugi akibat kecuaian yang didakwa dilakukan oleh orang tersebut. Plaintif telah mengakui penerimaan notis tersebut. Selepas itu, pada 9 Julai 2018, defendan pertama memfailkan saman pertama terhadap orang yang diinsuranskan dan bagi membela orang yang diinsuranskan daripada saman pertama, plaintif melantik Tetuan Harjit Singh Sangay & Co ('Tetuan HSS'). Bagaimanapun, saman pertama telah dihentikan oleh defendan pertama. Pada 23 Mei 2020, defendan pertama, kedua dan ketiga ('defendan-defendan') memfailkan saman kedua. Dalam saman kedua, defendan-defendan diwakili oleh Tetuan JKP. Tetuan JKP telah menghantar e-mel pada 2 Julai 2020 kepada peguamcara plaintif yang melampirkan notis defendan pertama dalam saman pertama tetapi mereka tidak menyampaikan notis baharu di bawah s 96(2)(a) APJ berhubung saman kedua kepada plaintif. Plaintif kemudiannya memfailkan saman pemula ('SP tersebut') terhadap defendan-defendan untuk, antara lain, pengisytiharan bahawa plaintif tidak bertanggungjawab menurut s 96(2)(a) APJ untuk membayar apa-apa jumlah penghakiman yang mungkin diperolehi oleh defendan-defendan terhadap orang yang diinsuranskan dalam saman kedua ('pengisytiharan tersebut'). Mahkamah Tinggi membenarkan pengisytiharan tersebut, justeru, rayuan semasa. Satu-satunya persoalan undang-undang yang perlu ditentukan ialah sama ada plaintif tidak bertanggungjawab di bawah s 96(1) APJ untuk membayar apa-apa penghakiman yang mungkin diperoleh oleh defendan-defendan terhadap

orang yang diinsuranskan dalam saman kedua atas alasan tunggal bahawa plaintif tidak 'mengetahui mengenai prosiding' dalam saman kedua menurut s 96(2)(a) APJ. Penyelesaian isu ini bergantung kepada sama ada plaintif 'mengetahui mengenai prosiding' dalam saman kedua di bawah s 96(2)(a) APJ melalui notis defendan pertama dalam saman pertama. Dalam menentang rayuan semasa, plaintif telah bergantung pada, antara lain, kes-kes: (a) *Chan Sow Ying v Pacific & Oriental Underwriters (M) Sdn Bhd* [1991] 2 CLJ Rep 408 ('kes *Chan Sow Ying*'); (b) *Malaysian Motor Insurance Pool (MMIP) (administered by MMIP Services Sdn Bhd) v Jivarathinam a/p Balasubramaniam (sebagai isteri, wakil diri yang sah dan Pentadbir kepada harta pusaka si mati, Sureskumar a/l Sybramaniam)* [2022] MLJU 1089 ('kes Jivarathinam'); dan (c) keputusan Mahkamah Rayuan dan keputusan Mahkamah Persekutuan bagi kes *Jivarathinam*.

Diputuskan, membenarkan rayuan, menolak SP tersebut dan mengenepikan keputusan Mahkamah Tinggi dengan kos RM20,000 dibayar oleh plaintif kepada defendan-defendan di sini dan di bawah (tertakluk kepada bayaran alokatur):

(1) Memandangkan tiada penghakiman bertulis telah diberikan berkenaan dengan keputusan Mahkamah Rayuan dan keputusan Mahkamah Persekutuan bagi kes *Jivarathinam*, dari sudut pandangan doktrin stare decisis, mahkamah tidak terikat dengan keputusan-keputusan tersebut. Oleh itu, plaintif tidak boleh bergantung kepada keputusan-keputusan tersebut (lihat perenggan 19 & 20).

(2) Sungguhpun tiada priviti kontrak antara pihak yang menuntut dan penanggung insurans, namun menurut s 96(1) APJ, Parlimen telah mengenakan liabiliti ('liabiliti statutori penanggung insurans') ke atas penanggung insurans untuk membayar jumlah penghakiman yang diperolehi oleh penuntut dalam saman terhadap seseorang yang diinsuranskan oleh syarikat insurans berdasarkan perlakuan tort kecuaian oleh orang yang diinsuranskan yang telah menyebabkan kerugian dan/atau kerosakan kepada penuntut dalam insiden yang melibatkan kenderaan bermotor (lihat perenggan 23).

(3) Seksyen 96(2)(a) APJ memperuntukkan bahawa hanya terdapat liabiliti statutori penanggung insurans jika penuntut boleh melepaskan beban keterangan untuk membuktikan di atas imbangan kebarangkalian salah satu daripada dua bahagian s 96(2)(a) APJ yang berikut: (a) penuntut telah memberikan 'notis prosiding' berkenaan saman penuntut kepada syarikat insurans yang berkenaan sebelum permulaan saman penuntut ('bahagian pertama tersebut'); atau (b) penuntut telah memberikan 'notis prosiding' kepada penanggung insurans berkenaan dengan saman penuntut dalam masa tujuh hari dari permulaan saman penuntut ('bahagian kedua tersebut'). Frasa 'mengetahui mengenai prosiding'

dalam s 96(2)(a) APJ mesti merujuk kepada pengetahuan penanggung insurans tentang saman penuntut yang kemudiannya boleh menimbulkan liabiliti statutori penanggung insurans di bawah s 96(1) APJ (lihat perenggan 23).

(4) Menurut s 2(1)(a) Akta Tafsiran 1948 dan 1967 ('AT'), Bahagian 1 AT adalah terpakai dalam penafsiran s 96(2)(a) APJ. Ini kerana APJ telah digubal selepas 18 Mei 1967 seperti yang difahami dalam s 2(1)(a) AT. Seksyen 17A AT telah memperuntukkan bahawa dalam tafsiran peruntukan berkanun, 'the court shall prefer a construction which would promote the purpose or object underlying the statute in question'. Oleh itu, berdasarkan s 17A AT, mahkamah boleh memberikan kesan kepada objek s 96(2)(a) APJ dan bukan sekadar maksud literal s 96(2)(a) APJ (lihat perenggan 23).

(5) Jika: (a) penanggung insurans mempunyai pengetahuan tentang saman pertama penuntut dalam pengertian bahagian pertama atau bahagian kedua tersebut; (b) saman pertama penuntut telah dihentikan dan tidak didengar oleh mahkamah atas meritnya atas apa-apa sebab sekalipun; dan (c) penuntut kemudiannya memfailkan saman kedua terhadap orang yang diinsuranskan berdasarkan fakta material yang sama seperti saman pertama penuntut, tiada keperluan di bawah bahagian kedua tersebut bagi penuntut untuk memaklumkan semula kepada pihak yang diinsuranskan mengenai saman kedua penuntut. Ini kerana penuntut sebelum ini telah memenuhi bahagian pertama tersebut, iaitu, penanggung insurans sudah mempunyai pengetahuan tentang saman penuntut, sama ada saman pertama atau saman kedua penuntut (berdasarkan fakta material yang sama dalam saman pertama penuntut) (lihat perenggan 23).

(6) Jika mahkamah menerima pakai tafsiran s 96(2)(a) APJ yang diberikan dalam kes *Chan Sow Ying*, kes *Jivarathinam* dan hakim Mahkamah Tinggi yang arif dalam rayuan semasa dengan menghendaki notis baharu bagi saman kedua penuntut disampaikan oleh penuntut kepada penanggung insurans: (a) ini akan menyebabkan ketidakadilan kepada penuntut dan menyebabkan liabiliti berkanun penanggung insurans di bawah s 96(1) APJ seperti yang diperuntukkan secara nyata oleh Parlimen menjadi sia-sia; (b) ini bertentangan dengan prinsip seperti yang dicadangkan dalam kes Mahkamah Rayuan *Aqmal bin Dakhirrudin v Azhar bin Ahmad & Anor* [2019] MLJU 1554 bahawa APJ adalah 'perundangan sosial' berkenaan dengan, antara lain, liabiliti statutori penanggung insurans di bawah s 96(1) APJ; dan (c) penafsiran s 96(2)(a) APJ seperti yang di atas telah melangkaui objek s 96(2)(a) APJ dan membenarkan penanggung insurans untuk memintas liabiliti statutori penanggung insurans di bawah s 96(1) APJ (lihat perenggan 23).

(7) Mahkamah mengesahkan keputusan dalam kes *Talasco Insurance Bhd (formerly known as Talasco Insurance Sdn Bhd) v Goh Thiam Hock* [1999] 1 MLJ 179. Mahkamah menolak keputusan-keputusan dalam: (a) *China Insurance Co Ltd v Ng Siak Yow & Ors* [1963] 1 MLJ 244; (b) kes *Chan Sow Ying*; dan (c) penghakiman Mahkamah Tinggi dalam kes *Jivarathinam* (lihat perenggan 23).

(8) Berdasarkan tafsiran mahkamah terhadap s 96(1) dan (2)(a) APJ, hakim Mahkamah Tinggi yang arif telah jelas melakukan kesilapan undang-undang yang: (a) telah menyebabkan ketidakadilan kepada defendan-defendan; dan (b) mewajarkan campur tangan rayuan dalam rayuan ini. Dalam kes ini, melalui pengakuan plaintif terhadap penerimaan notis defendan pertama dalam saman pertama, plaintif mempunyai pengetahuan sebenar tentang saman pertama atau mana-mana saman lain yang mungkin kemudiannya difailkan terhadap orang yang diinsuranskan. Malah, plaintif telah melantik Tetuan HSS untuk bertindak bagi orang yang diinsuranskan dalam saman pertama dan Tetuan HSS telah memfailkan pembelaan untuknya dalam saman pertama. Adalah jelas bahawa defendan-defendan telah memenuhi bahagian pertama s 96(2)(a) APJ. Oleh itu, Mahkamah Tinggi tidak sepatutnya memberikan pengisytiharan dalam SP tersebut (lihat perenggan 25–26).]

Cases referred to

AmGeneral Insurance Bhd v Sa' Amran a/l Atan & Ors and other appeals [2022] 5 MLJ 825, FC (refd)

Aqmal bin Dakhirrudin v Azhar bin Ahmad & Anor [2019] MLJU 1554, CA (refd)

Chan Sow Ying v Pacific & Oriental Underwriters (M) Sdn Bhd [1991] 2 CLJ Rep 408, HC (overd)

China Insurance Co Ltd v Ng Siak Yow & Ors [1963] 1 MLJ 244 (overd)

Desouza v Waterlow [1997] Lexis Citation 4295, CA (folld)

Malaysian Motor Insurance Pool (MMIP) (administered by MMIP Services Sdn Bhd) v Jivarathinam a/p Balasubramaniam (sebagai isteri, wakil diri yang sah dan Pentadbir kepada harta pusaka si mati, Sureskumar a/l Sybramaniam) [2022] MLJU 1089, HC (refd)

Nawaz & Anor v Crowe Insurance Group [2003] EWCA Civ 316, CA (folld)

Syahin Hafiy Danial bin Soh Ahmad Luptepi Amin v Mansur bin Yunus & Anor [2021] 8 MLJ 297; [2019] 1 LNS 1237, HC (folld)

Talasco Insurance Bhd (formerly known as Talasco Insurance Sdn Bhd) v Goh Thiam Hock [1999] 1 MLJ 179; [1998] 1 LNS 368, HC (folld)

Tetuan Wan Shahrizal, Hari & Co v Public Prosecutor [2023] 4 MLJ 1, FC (folld)

Wake v Page & Anor [2000] Lexis Citation 4603, CA (folld)

Wong Choo Yong v Safety Insurance Co Ltd [1971] 2 MLJ 260 (refd)

Legislation referred to

Interpretation Acts 1948 and 1967 ss 2(1)(a), 17A, Part 1
Road Traffic Ordinance 1958 (repealed by Road Transport Act 1987) s 80(2)(a)
Road Transport Act 1987 ss 2, 96(1), (2)(a), 118(1), (2)
Road Traffic Act 1988 [UK] s 152(1)(a)

Appeal from: *Liberty Insurance Bhd (dahulunya dikenali sebagai Uni Asia General Insurance Bhd) v Mohamed Fayadh bin Abdul Gaffor & Ors* [2021] MLJU 2427 (High Court, Kuala Lumpur)

GK Ganesan Kasinathan (with Geetha Kesavan Nair, Saravana Kumar a/l Koothaperumal, TP Vaani and JN Lheela) (Jega Kumar & Partners) for the appellant.
Imavathi Subramaniam (with JS Naicker and Dhanaraj K Naidu) (Naicker & Assoc) for the respondent.

Wong Kian Kheong JCA (delivering judgment of the court):

A. INTRODUCTION

[1] This judgment discusses the conflicting High Court decisions regarding the interpretation of s 96(2)(a) of the Road Transport Act 1987 ('the RTA'). The construction of s 96(2)(a) of the RTA has a direct impact on the scope of an insurer's liability under s 96(1) of the RTA to pay a judgment sum obtained by a claimant in a suit against a person insured by the insurer based on the insured's tort of negligence which had caused loss and/or damage to the claimant in an incident involving a 'motor vehicle' (as defined in s 2 of the RTA).

B. BACKGROUND

[2] We shall refer to parties as they were in the High Court.

[3] On 28 June 2014, the first defendant ('first defendant') was riding a motorcycle (registration No PCW 6859) when the first defendant met with an accident ('accident') involving a car (registration No PLM 1767) driven by Encik Mohd Sakri bin Muhamad ('insured').

[4] As a result of the accident, the first defendant suffered severe injuries and permanent disabilities. The first defendant has registered himself with the Social Welfare Department as a 'Disabled Person'.

[5] The plaintiff company ('plaintiff') is the insurer of the insured.

[6] In accordance with s 96(2)(a) of the RTA, the first defendant's solicitors, Messrs Jega Kumar & Partners ('Messrs JKP'), served a notice dated 22 September 2015 on the plaintiff regarding the first defendant's claim against the insured for damages ('first defendant's claim') due to the alleged negligence of the insured in respect of the accident ('first defendant's notice (first suit)'). The plaintiff had acknowledged receipt of the first defendant's notice (first suit) by a 'RECEIVED' stamp of the plaintiff dated 30 September 2015 ('plaintiff's acknowledgement of receipt ('first defendant's notice (first suit))').

[7] Subsequent to the first defendant's notice (first suit), on 9 July 2018, the first defendant filed Suit No PA-A53KJ-125–07 of 2018 in the sessions court against the insured regarding the first defendant's claim (first suit).

[8] In the first suit:

(1) the plaintiff, as the insured's insurers, in the exercise of the plaintiff's right of subrogation under the insurance policy taken out by the insured, appointed Messrs Harjit Singh Sangay & Co ('Messrs HSS') to defend the insured;

(2) on behalf of the insured, Messrs HSS had filed a defence to resist the first suit; and

(3) on 23 April 2019, the first suit was discontinued by the first defendant with liberty to file afresh.

[9] On 23 May 2020, Suit No PA-B53KJ-3–05 of 2020 was filed in the sessions court against the insured (second suit) by the first defendant together with the second and third defendants ('second defendant' and 'third defendant'). In this judgment, we shall refer to the first, second and third defendants collectively as the 'defendants'.

[10] In respect of the second suit:

(1) Messrs JKP acted for the defendants;

(2) Messrs JKP sent an email on 2 July 2020 to the plaintiff's solicitors which attached the first defendant's notice (first suit); and

(3) Messrs JKP did not serve a fresh notice under s 96(2)(a) of the RTA regarding the second suit on the plaintiff.

C. ORIGINATING SUMMONS FILED BY PLAINTIFF AGAINST DEFENDANTS (OS)

[11] The plaintiff filed the OS in the High Court against the defendants for, among others, a declaration that the plaintiff was not liable pursuant to

s 96(2)(a) of the RTA to pay any judgment which may be obtained by the defendants against the insured in the second suit ('declaration'). A

[12] The learned High Court judge granted the declaration with costs of RM2,500 to be paid by the defendants to the plaintiff ('High Court's decision'). The defendants have appealed to the Court of Appeal against the High Court's decision ('this appeal'). B

[13] According to the learned High Court judge's 'Grounds of Judgment', s 96(2)(a) of the RTA mandatorily required the defendants to serve a fresh notice of the second suit on the plaintiff 'before or within seven days' after the commencement of the second suit. The High Court relied on the judgment of Lamin Mohd Yunus J (as he then was) in the High Court case *Chan Sow Ying v Pacific & Oriental Underwriters (M) Sdn Bhd* [1991] 2 CLJ Rep 408. C

D. SUBMISSION BY PARTIES D

[14] In support of this appeal, the defendants' learned lead counsel, Mr GK Ganesan Kasinathan, has cited the following judgments, among others:

(1) the decision of Suriyadi Halim Omar J (as he then was) in *Talasco Insurance Bhd (formerly known as Talasco Insurance Sdn Bhd) v Goh Thiam Hock* [1999] 1 MLJ 179; [1998] 1 LNS 368 ('*Goh Thiam Hock*'); and E

(2) a trilogy of judgments of United Kingdom's (UK) Court of Appeal, namely: F

(a) *Desouza v Waterlow* [1997] Lexis Citation 4295;

(b) *Wake v Page & Anor* [2000] Lexis Citation 4603; and

(c) *Nawaz & Anor v Crowe Insurance Group* [2003] EWCA Civ 316. G

[15] In resisting this appeal, the plaintiff's learned lead counsel, Ms Imavathi Subramaniam, has advanced the following contentions:

(1) besides the plaintiff's reliance on the judgment in *Chan Sow Ying*, Ms Imavathi has cited the decision of Amarjeet Singh Serjit Singh JC (as he then was) in the High Court case of *Malaysian Motor Insurance Pool (MMIP) (administered by MMIP Services Sdn Bhd) v Jivarathinam a/p Balasubramaniam (sebagai isteri, wakil diri yang sah dan Pentadbir kepada harta pusaka si mati, Sureskumar a/l Sybramaniam)* [2022] MLJU 1089. I shall refer to this judgment as the 'High Court's judgment (Jivarathinam)'. H I

The High Court's judgment (*Jivarathinam*) followed the judgment of the learned High Court judge who had decided the OS in this case;

(2) the claimant (based on the tort of negligence) in the High Court's

judgment (*Jivarathinam*) had appealed to the Court of Appeal against the High Court's judgment (Jivarathinam) but this appeal was dismissed by the CA ('Court of Appeal's decision (Jivarathinam)'). There is however no written judgment for the Court of Appeal's decision (*Jivarathinam*);

(3) the claimant had applied to the Federal Court for leave to appeal against the Court of Appeal's decision (*Jivarathinam*). The Federal Court had dismissed this application ('Federal Court's decision (Jivarathinam)'). No written judgment has been given for the Federal Court's decision (*Jivarathinam*); and

(4) paras (a) to (d) of s 118(1) of the RTA have prescribed for certain modes of service of any notice which is required to be given or served under RTA. With regard to the second suit, the defendants failed to comply with s 118(1)(a) to (d) of the RTA and had therefore failed to serve any statutory notice on the plaintiff in accordance with s 96(2)(a) of the RTA.

E. SOLE ISSUE

[16] The only question of law to be determined in this appeal is whether the plaintiff was *not* liable under s 96(1) of the RTA to pay for any judgment which might be obtained by the defendants against the insured in the second suit on the sole ground that the plaintiff had no 'notice of the proceedings' in the second suit pursuant to s 96(2)(a) of the RTA. The resolution of this issue depends on whether the plaintiff had 'notice of the proceedings' in the second suit under s 96(2)(a) of the RTA by way of the first defendant's notice (first suit).

OUR DECISION

F. CONSTRUCTION OF S 96(1) AND (2)(A) OF THE RTA

F(1). Substantially similar statutory provisions

[17] We reproduce below s 96(1) and (2)(a) of the RTA:

> *s 96 Duty of insurers to satisfy judgements against persons insured in respect of third party risks.*
>
> (1) *If, after a certificate of insurance has been delivered under subsection 91(4) to the person by whom a policy has been effected, judgement in respect of any such liability as is required to be covered by a policy under paragraph 91(1)(b) (being a liability covered by the terms of the policy) is given against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, the insurer shall, subject to this section, pay to the persons entitled to the benefit of the judgement any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgements.*

(2) *No sum shall be payable by an insurer under subsection (1)* —

(a) *in respect of any judgement, unless before or within seven days after the commencement of the proceedings in which the judgement was given, the insurer had notice of the proceedings* ... (Emphasis added.)

[18] Section 96(2)(a) of the RTA is substantially similar to the following statutory provisions:

(1) s 80(2)(a) of the Road Traffic Ordinance 1958 ('the RTO) provided as follows:

s 80(2) *No sum shall be payable by an insurer under the foregoing provisions of this section* —

(a) *in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given the insurer had notice of the proceeding* ... (Emphasis added.)

RTA has now replaced RTO; and

(2) s 152(1)(a) of UK's Road Traffic Act 1988 ('the RTA (UK)'). According to s 152(1)(a) of the RTA (UK):

s 152(1) No sum is payable by an insurer under s 151 [RTA (UK)] —

(a) *in respect of any judgment unless, before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings,* ... (Emphasis added.)

In view of the substantial similarities of the above statutory provisions with s 96(2)(a) of the RTA, cases decided under those statutory provisions are persuasive and will be discussed subsequently in this judgment.

F(2). Whether Court of Appeal is bound by Court of Appeal's decision (Jivarathinam) and Federal Court's decision (Jivarathinam)

[19] As no written judgment has been given in respect of the Court of Appeal's decision (*Jivarathinam*) and the Federal Court's decision (*Jivarathinam*), from the view point of the *stare decisis* doctrine, we are not bound by the CA's decision (*Jivarathinam*) and the Federal Court's decision (*Jivarathinam*). In this regard, we rely on the following two cases:

(1) in *Tetuan Wan Shahrizal, Hari & Co v Public Prosecutor* [2023] 4 MLJ 1, at [11] to [23], Abdul Rahman Sebli CJ (Sabah and Sarawak) has delivered the majority judgment of the Federal Court as follows:

[11] ... *With due respect to the learned judge, none of the grounds constitute valid reasons for allowing the claim. The Court of Appeal was absolutely correct in*

reversing the decision. First of all, the learned judge was wrong in holding in para 37 that he was bound by stare decisis to follow the decision of the Court of Appeal in Md Sukri bin Shahudin lain-lain lwn Pendakwa Raya Criminal Appeal No W-09–432–11 of 2016 (unreported) ('Md Sukri'), which allowed the claims by several law firms, among them the law firms of Messrs Isharidah Chong & Menon, Messrs Stanley Augustine & Co and Messrs Haresh Mahadevan & Co for their legal fees to be paid from the seized properties. As confirmed by the learned judge himself, no written grounds were delivered by the Court of Appeal in that case.

[12] *Without the benefit of the written grounds, there was no way that the learned judge could have known of the actual reason or reasons why the Court of Appeal decided the way it did in that case. In any case, it was wrong for him to have engaged in guesswork on the basis for the unwritten decision, which undoubtedly had weighed heavily in his mind in deciding whether or not to allow the appellant's claim.*

[13] *What binds the lower courts under the stare decisis doctrine is the ratio decidendi of the case and not mere similarity in the facts or in the law, or in the arguments of counsel, nor the obiter dicta of the case.*

[14] *A lower court relying on an earlier unwritten decision of an appellate court must not assume that by affirming the decision of the lower court, the appellate court must have affirmed every finding of fact and law that the lower court had decided in favour of the winning party. Experience will tell that it is not uncommon for an appellate court to affirm or reverse the decisions of the lower courts on grounds other than those relied on by the lower courts.*

[15] Nor must the court, in the absence of the written grounds, accept the argument that the appellate court in the earlier case decided the way it did because it accepted counsel's argument, even where the earlier case involved the same counsel. Such acceptance of counsel's argument must be reflected in the written grounds of judgment. The role of counsel is to assist and the court to decide.

[16] *Ratio decidendi is Latin for 'the rationale for the decision'. The term refers to a key judicial point or chain of reasoning in a case that drives the final judgment. It is 'the principle or rule of law on which a court's decision is founded' (Black's Law Dictionary (11th Ed)) or 'the principle that the case establishes' (Barron's Law Dictionary (2nd Ed)).*

[17] *Obviously therefore, a decision that is delivered without the written grounds does not establish any principle or rule of law on which the decision is founded. The decision is therefore devoid of any ratio decidendi (rationale for the decision). It has no value as precedent. There may be instances where the court, either in its original or appellate jurisdiction, delivers a reasoned oral decision ex tempore but in that situation, the reasons must be reduced into writing in order for the decision to have any binding effect on the lower courts.*

[18] *We are not aware of any principle of law, nor have we been referred to any authority to say that the lower courts are bound by stare decisis even where the higher courts do not provide written grounds for their decisions. The following*

explanatory note on the doctrine, which can be found in Black's Law Dictionary, is relevant:

The doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination, or to a new ruling by the same tribunal, or by those which are bound to follow its adjudications, unless it be for urgent reasons and in exceptional cases.

[19] *Thus, where there are no grounds written, there is no point or principle of law that can officially be decided or settled by the ruling of a competent court. The correct position of the law is that an unwritten decision of a higher court, whether sitting in its original or appellate jurisdiction, binds the parties to the action but is not authority for any principle or rule of law and does not bind the lower courts. This is where the learned judge in the present case fell into error when he said that he was bound by stare decisis to follow the unwritten decision of the Court of Appeal in Md Sukri.*

[20] *Presumably, the learned judge was not alerted to the decision of this court in Vishnu a/l Telagan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2019] 6 MLJ 1; [2019] 9 CLJ 177 *where David Wong Dak Wah CJ (Sabah and Sarawak) delivering the unanimous decision of the court said:*

[40] *The respondents argued that the Federal Court there had heard a similar argument on this point and refused the detainee a writ of habeas corpus. As at the date of our decision in this appeal, no written grounds had been delivered in respect of that case and so we are therefore unable to glean any reasons why such a decision was made. Therefore we did not see how the said judgment lent any support to the respondent's case. Surely, in arriving at our decision, we had to consider and apply the law according to the facts and circumstances of this case.*

[21] The decision of this court referred to in the above passage is the unreported case of *Kamal Azam Borddin v Timbalan Menteri Dalam Negeri & Ors* Criminal Appeal No 05(HC)-133–05 of 2018(B) (unreported). In that case, a five member bench headed by Richard Malanjum CJ unanimously dismissed the appellant's appeal against the decision of the High Court dismissing his application for habeas corpus without giving any reason, written or otherwise, after hearing arguments by the parties.

[22] *In fact a similar decision was reached in an earlier decision of this court in Malaysian Motor Insurance Pool v Tirumeniyar a/l Singara Veloo* [2020] 1 MLJ 440; [2019] 10 CLJ 731. *This is what the court said at para 82:*

[82] *Without a written judgment the Federal Court's reasons for allowing the appeal as alluded to in the editorial note, is in our view purely speculative, and cannot be regarded as authoritative and/or binding. We would therefore disagree with the plaintiff that the Court of Appeal erred and 'was in breach of stare decisis' when it did not consider itself bound to follow Saw.*

[23] *Applying the above ratio to the present case, the learned judge would not have been in breach of stare decisis if he had chosen not to follow the decision of the Court of Appeal in Md Sukri. What was required of him was to consider and*

apply the law according to the facts and circumstances of the case before him (Vishnu a/l Telagan) instead of tying his own hands to the unwritten decision of the Court of Appeal. (Emphasis added.)

(2) it is decided in *Syahin Hafiy Danial bin Soh Ahmad Luptepi Amin v Mansur bin Yunus & Anor* [2021] 8 MLJ 297; [2019] 1 LNS 1237, at [13] and [14] as follows:

> [13] *In support of this appeal, the defendant's learned counsel has referred to the following:*
>
> (3) *sealed judgments and orders as well as draft judgments and orders of the Court of Appeal, High Court and sessions court of other cases (Other Cases);*
>
> (4) *written submission filed in the Other Cases; and*
>
> (5) *memorandum of appeal and notice of appeal filed in the Other Cases.*
>
> [14] *I am not able to accept the reference by the defendant's learned counsel to Other Cases except if written judgments have been delivered in the Other Cases. This is because from the view point of the stare decisis doctrine, only the ratio decidendi ascertained from a written judgment of a superior court, has binding or persuasive effect. I refer to the judgment of Raja Azlan Shah FJ (as his Majesty then was) in the Federal Court case of Malaysia National Insurance Sdn Bhd v Abdul Aziz bin Mohamed Daud* [1979] 2 MLJ 29*, at 32 as follows:*
>
> *However, I would once again emphasize what has so often been said before, that precedents are not to be slavishly followed; a case may be followed only for its strict ratio decidendi.* (Emphasis added.)
>
> *Without a written judgment of a previous case, the court cannot ascertain the ratio decidendi of the previous case by considering the following three matters ('three matters'):*
>
> (1) *the material facts of the case which give rise to the issue to be decided by the court*
>
> (2) *the rule of law which has been applied by the court to resolve the issue; and*
>
> (3) *the reasoning of the court in applying the rule of law to decide the issue in question.* (Emphasis added.)

[20] As explained in the above para 19, the plaintiff cannot rely on the Court of Appeal's decision (*Jivarathinam*) and the Federal Court's decision (*Jivarathinam*) to resist this appeal.

F(3). Malaysian High Court judgments

[21] We refer to the following judgments of the High Court regarding s 80(2)(a) of the RTO and s 96(2)(a) of the RTA (in chronological order):

(1) in *China Insurance Co Ltd v Ng Siak Yow & Ors* [1963] 1 MLJ 244, at pp 245 to 246 ('Ng Siak Yow'), Gill J (as he then was) had decided as follows:

> *It was contended on behalf of the appellants that they could be made liable only if they had been given a notice of the proceedings as required by s 80(2)(a) ('RTO'). It was argued on the authority of Weldrick v Essex and Suffolk Equitable Insurance Society Limited* (1950) 83 Lloyd Rep 91 *that the letter dated the 16th June, 1958 sent to them by the respondents' solicitors was not a proper notice. The respondents, on the other hand, argued on the authority of Ceylon Motor Insurance Association Ltd v PP Thambugala* [1953] 3 WLR 486 *(PC) that it was a proper notice.* At no stage of the proceedings was it suggested that the driver of the car was not an insured person within the meaning of s 80 (RTO). In the event the magistrate decided in favour of the respondents and gave judgment against the appellants. It is against that decision that the appellants have now appealed.
>
> *The only question to be decided in this appeal is whether the letter of 16th June, 1958 was a sufficient notice under s 80(2)(a) (RTO).*
>
> ...
>
> *In the Weldrick case the question arose whether a notice in the following terms was a sufficient compliance with s 10(2)(a) of the English Road Traffic Act, 1934, the terms of which are almost identical with s 80(2)(a) (RTO):*
>
> We understand your Society has repudiated liability, and we shall be grateful to have your confirmation thereof in writing, because you will appreciate, we shall have to take proceedings as against Mohamed, and as against the owner of the other vehicle, and at the same time give notice to the Motor Insurers Bureau of your repudiation of liability.
>
> *It was held that it was not. Birkett J, said in that case (at p 102):*
>
> *... where there is a statutory requirement of this kind, it must be pretty strictly fulfilled. There is no evidence really before me that the defendants in this case ever did have notice of the proceedings, either before or within seven days after they had been brought. What they did have was an intimation that in certain circumstances proceedings might be brought, but not necessarily that they would be brought. This point has been called a technical point, and I suppose it is, but I think I must come to the conclusion upon the technical matter that the requirements of s 10 have not been fulfilled in as much as the insurer did not have notice of the bringing of the action.*
>
> *In the Thambugala case, a case from Ceylon, the notice was in the following terms:*
>
> Re Car No X-4851.
>
> We are instructed by Mr P P Thambugala of ... to file an action for the recovery of Rs15,000 against Mr Kodituwakku Aratchige Stephen Perera of ... being damages sustained by our client as a result of the above car knocking down our client on September 1, 1945, by reason of the negligent and careless driving on the part of his driver.

A We are given to understand that the above car has been insured with your company.

Our client is still under treatment and unless our client's claim is settled on or before the 31st instant, we are instructed to file action against the owner of the car.

B *The District Judge held that this was sufficient notice under s 134 of Ceylon's Motor Car Ordinance [MCO (Ceylon)] which bears a resemblance to s 10(2)(a) of the English Road Traffic Act, 1934, and gave judgment for the respondent for the sum claimed. His decision was affirmed by the Supreme Court of Ceylon. On further appeal to the Privy Council it was held that the name and address of the proposed plaintiff, the name of the owner of the car and its number, the date of the accident and the sum claimed as damages in the letter of May 21, 1946 were elements which, taken together, constituted it a sufficient notice of action under section 134 (MCO (Ceylon)).*

C *The main argument before the Privy Council in the Thambugala case was that the letter of May 21st, 1946 should have contained the name of the court in which it was proposed to file action, because an action cannot be specified with precision without reference to its number and to the name of the court in which it is filed. But Their Lordships pointed out that as s 134 contemplates the possibility of giving notice before the action was filed, in that event no number could be given. It followed therefore that the section contemplates something containing less than a precise specification of the action. Their Lordships also referred to the Weldrick case which in their view did not help the appellant. They agreed with the District Judge that the main purport of the letter in that case was to obtain confirmation of an alleged repudiation of liability and that it was not possible to say that it was a proper notice complying with the provisions of s 10(2)(a) of the Road Traffic Act, 1934.*

D In the present case the material portion of the letter dated 16th June, 1958 was in the following terms:

E We are instructed to claim damages from you in respect of our client's injuries. Please let us know if liability is admitted.

F *To my mind this was nothing more than an intimation that a claim was being made and an inquiry as to whether liability was admitted. It is to be observed that in the Thambugala case there was a proper notice of action. I therefore cannot see how it can possibly be argued that the decision in that case helps the respondents in this case. Section 80(2)(a) contemplates the giving of notice of the proceedings in which the judgment was given. In my opinion there can be no notice of such proceedings unless it is stated in unequivocal terms that the parties intend to file an action for the recovery of damages. The notice in this case was not a notice of action but a notice of claim, which is not the same thing as a notice of action.*

G *It has been argued on behalf of the respondents that when damages are claimed the ultimate result must necessarily be an action. With respect that may not always be the case. If, for instance, the claim is admitted there may be no action. In any event, if the ultimate result contemplated is an action, it must be so stated in the letter so as to leave no doubt in the mind of the insurer. As stated in Halsbury (3rd*

H

I

Ed) Vol 22, p 376, para 770, 'the notice must be of sufficient formality to be understood by a reasonable man as an intimation of legal proceedings, but no particular formality is required, nor is there any need to plead the giving of notice.' If the letter in this case had gone on to say that action would be brought if liability was not admitted or no reply given by a certain date or within so many days, or words to that effect, it would have been a proper notice. I do not think that an experienced and astute solicitor would draw up a notice of action in the terms in which this letter was couched.

It is to be observed that s 80(3) (RTO) enables the insurer to obtain a declaration of non-liability on certain grounds in legal proceedings instituted for the purpose, provided that they are instituted before the expiration of a specified period and provided, in certain circumstances, that notice is given of the proceedings by the insurer to the injured party within a prescribed time. One of the objects, though not the sole object, of the notice of proceedings under s 80(2)(a) (RTO) is to enable the insurer to institute his proceedings under s 80(3) (RTO) within time.

In all the circumstances of the case and in view of what I have stated above, I am of the opinion that the learned Magistrate was wrong in holding that the appellants as insurers had had a notice of the proceedings against the insured, and consequently in giving judgment against them. Therefore the appeal is allowed and the judgment of the court below reversed. There will accordingly be an order that the judgment of the Magistrate be set aside and that the action before him do stand dismissed. Before concluding the matter, however, I must say that I allow this appeal with very great reluctance and because I feel that I have no option but to do so. The respondents have my profound sympathies, because it seems to me that they find themselves in the position in which they are because the letter written on their behalf to the appellants did not contain a few more words so as to make it a proper notice under the (RTO). The respondents will also have to bear the costs of this appeal and of the action in the lower court, and I make an order accordingly. (Emphasis added.)

(2) Ibrahim J delivered the following judgment in *Wong Choo Yong v Safety Insurance Co Ltd* [1971] 2 MLJ 260, at pp 261–262:

The said s 80(2)(a) is identical with s 10(2)(a) of the English Road Traffic Act of 1934 except that in the English Act, the notice to be given to the insurer is notice of the bringing of the proceedings. As in this action the purported notice was given before the commencement of the proceedings the difference in the two statutes is in my view immaterial when considering English authorities on this issue.

A letter dated 14th February 1965 (copy of which is at pp 9 and 10 of 'A' and hereinafter referred to as 'the said letter') was sent by the plaintiff's solicitors to the said Chin Yoon Sin with carbon copies extended to the said Lai Mee Nam and the defendants at their Kota Bharu and Kuala Lumpur offices and the decision on the second issue would depend on whether in the circumstances of this case the said letter and extension of its carbon copies to the defendants would constitute sufficient and good notice for the purpose of the said s 80(2)(a). The defendants do not deny receipt of carbon copies of the said letter but it is also common ground that the original sent to the said Chin Yoon Sin was not received by him at the address given therein and that a

second letter dated 14th March 1965 (copy of which is at pp 14 and 15 of 'A') was sent to and received by him at another address. No carbon copy of the second letter was however extended to the defendants though one was extended to the said Lai Mee Nam.

It was submitted on behalf of the defendants that extension of the carbon copies of the said letter to them could not be a good notice when the said letter itself was not served on the said Chin Yoon Sin. I do not agree with this submission. The object of extending carbon copies of the said letter to the defendants was to give them notice of intended proceedings against the said Chin Yoon Sin and in my view so long as proceedings were subsequently commenced against him the carbon copies of the said letter extended to the defendants would constitute a good notice to them of those proceedings irrespective of whether the said letter was or was not served on the said Chin Yoon Sin.

...

Section 134 (MCO (Ceylon)) which bears some resemblance to our said s 80(2) provides:

...

and in *Ceylon Motor Insurance Association Ltd v Thambugala* [1953] 2 All ER 870, the Privy Council held that*:*

the notice, in setting out the name and address of the proposed plaintiff, the name of the owner and the number of the car which caused the injuries, the date of the accident, and the sum being claimed as damages, was a sufficient notice of action under s 134(a), it not being necessary that it should contain the name of the court in which it was proposed to file action, and, accordingly, the appellants were liable to pay the sum claimed as damages.

All the particulars referred to above in the Ceylon case which were considered sufficient were also mentioned in the said letter in this action except the ownership of the said motor lorry. This, however, as I have said earlier, could easily have been found out by the defendants. The said letter also contained the additional information that legal proceedings would be taken in the High Court at Kuala Trengganu. This additional information is of vital importance when one considers that one of the objects, though not the sole object, of the notice under the said s 80(2)(a) was to enable the defendants to institute proceedings within the prescribed time to obtain a declaration of non-liability on certain specified grounds under s 80(3) of the said Road Traffic Ordinance. I am therefore satisfied that sufficient particulars had been given in the said letter to constitute it a sufficient notice to the defendants that proceedings were intended to be taken against the insured person.

The last paragraph of the said letter read as follows:

We have accordingly been instructed to demand the payment to our client of the sum of $30,939.00 in full settlement of his claims and to file legal proceedings against you in the High Court at Kuala Trengganu unless within 10 days from receipt of this letter we receive a written admission of your liability for these claims.

The main submission made on behalf of the defendants was that those words did not constitute sufficient notice of proceedings as they amounted to no more than a conditional or a contingent threat that proceedings would proceed only if the addressee did not admit liability or if he admitted liability he did not or made no arrangements to pay.

...

In the *Ceylon* case the letter written by the respondent to the appellant company read thus:

unless our client's claim is settled on or before the 31st instant, we are instructed to file action against the owner of the car.

As both letters threatened that legal proceedings would be filed the effect of the words 'unless ... we receive a written admission of your liability' in the last paragraph of the said letter in this case was, in my view, the same as the words 'unless our client's claim is settled' in the Ceylon case and just as the letter in the Ceylon case was held to be so I hold that the said letter in this case was also sufficient notice. The said letter was not a mere notice of claim and the legal proceedings threatened therein unless liability was admitted could not be said to be a contingent or conditional threat.

I therefore give judgment for the plaintiff against the defendants in the sum of $47,817 and costs. (Emphasis added.)

(3) according to *Chan Sow Ying*, at pp 409, 410 and 411:

This is an appeal by the plaintiff against the decision of the learned magistrate dismissing her application to strike out the defendant's defence and to enter summary judgment for the sum of RM8,000. *The facts of this case were briefly that on 4 August 1972 the plaintiff travelled as a passenger in a motor car bearing registration No CA 4220 and the said car collided with another motor vehicle driven by one Sari bin Mat Tahar. The plaintiff through her solicitors commenced proceedings against Sari and a notice of proceedings dated 20 June 1974 was issued and sent by AR Register to both Sari and his insurers. A civil suit was instituted against Sari in the High Court of Kuantan vide Kuantan High Court Civil Suit No 121 of 1975. But the writ could not be served on the defendant and it expired through lapse of time. plaintiff's solicitors subsequently filed a fresh writ of summons vide Kuantan High Court Civil Suit No 76 of 1977 and issued a notice of commencement of proceedings dated 16 March 1977 to the defendants. The learned counsel for the plaintiff contended before the learned magistrate that the first notice served on the defendant was a valid and sufficient notice. Learned counsel for the defendant however maintained that a fresh action presupposes a fresh notice. Hence the first notice of proceedings dated 20 June 1974 could not be a valid notice in respect of Kuantan High Court Civil Suit No 76 of 1977. However, the second notice dated 16 March 1977 was received by the defendant more than seven days after the commencement of the Kuantan High Court Civil Suit No 76 of 1977 which was dated 8 March 1977. This second notice was therefore not a valid notice for the purposes of s 80(2)(a) (RTO). Being so the case, the defendant was not liable to pay the judgment sum obtained in Kuantan High*

Court civil suit nos. 75 and 76 of 1977. The learned magistrate however dismissed plaintiff's application as she found that the defendant had a good defence.

...

The question to be decided in this appeal is which of the two notices that could legally be considered as valid and sufficient notice for the purposes of Kuantan High Court Civil Suit No 76 of 1977 in order to satisfy the requirement under s 80(2)(a) (RTO) ...

...

That claim was then instituted by way of the first writ in 1975. When the life of the writ expired, one can only assume that the intention to institute a claim as conveyed in the said notice had also ceased to exist. Otherwise that intention to file a claim will remain as a reminder or as a threat that a claim will be filed somehow, sometime. It will keep everyone concerned guessing and waiting indefinitely and I do not think that it will be in consonance with good conscience and fair play. If I may add that the object of s 80(2)(a) (RTO) from the way it is worded is to give the insurer sufficient notice thereby giving him an opportunity to put up a defence if necessary before he is made to pay as adjudged. That would involve consulting his counsel and interviewing the insured in order to ascertain the true position. If a notice were to remain good for all time notwithstanding the expiry of the writ of summons, then the party supposedly to be liable to pay would have to spend time and money to prepare his defence when in the end it was found unnecessary because the injured party chose not to proceed for reasons best known to himself. So to my mind, it is good policy to maintain that the first notice is only good for the first writ of summons and once its life expires, the first notice must also go with it. Since the first writ has ceased to be in force the second writ must be taken as a fresh writ and it cannot be treated otherwise. The plaintiff/appellant saw it fit to have it served, with a notice accompanying it. There was no mention and not a hint that there has been another notice issued earlier. The second notice was brief and it made direct reference to the suit in hand and the precise provision of the [RTO]. The inference could be no other than the second notice was meant to be received as a proper notice of the proceedings pertaining to the Kuantan High Court Civil Suit No 76 of 1977, in respect of which summary judgment was obtained. In the circumstances I therefore dismissed the appeal with costs. (Emphasis added.)

(4) the following judgment had been delivered in *Goh Thiam Hock*:

An accident occurred on 4 April 1992 between the plaintiff and one Zakaria bin Ithnin who was the owner/driver of a motor van, registered as JCD 6105. On 7 February 1994, the plaintiff filed an action against Zakaria at the magistrate's court. The action was filed as Summons No 73–19–94. A default judgment was obtained whereby Zakaria bin Ithnin was to pay the plaintiff RM22,000 as general damages, together with interest at 8% pa, from 27 December 1994 until realization. He was also ordered to pay special damages of RM1,778 and costs of RM3,229.

Prior to the court's proceedings which resulted in that judgment, the plaintiff

had undertaken every possible step to identify the insurer, but to no avail. Only after judgment was obtained against Zakaria was it discovered that Talasco Insurance Sdn Bhd was the relevant insurer at the time of the accident. With that information and armed with the magistrate's court's order, the plaintiff filed an action against that insurance company ('the defendant') at the sessions court. It was registered as Sessions Court Summons No 52–234–97. *The statement of claim before the sessions court judge, inter alia, claimed that pursuant to s 96(1) (RTA), Talasco Insurance Sdn Bhd was required to indemnify and pay the adjudged sum to the plaintiff … The defendant filed an application vide a notis permohonan (RR8) before the same court to have the default judgment set aside, pursuant to O 28 r 8 of the Subordinate Courts Rules 1980.*

Much to the defendant's chagrin, the application did not get the sympathy of the court, and was dismissed with costs. It subsequently filed an appeal, and the matter was heard on 30 October 1998.

Having heard the submissions of both parties, the main issues that were required to be resolved were whether:

(1) from the evidence adduced, there were sufficient grounds for me to allow the appeal and to set aside the default judgment of Summons No 52–234–1997;

(2) *in the event I find that the insurer had no notice of the proceedings of Summons No 73–19–94, before or within seven days after that proceeding, what would be the contagion effect*;

(3) *pursuant to s 96(2)(a) (RTA), it could be interpreted that the varied acts and countless steps undertaken by the plaintiff were sufficient enough to permit the court to construe that the insurer had notice of the proceedings*; and

(4) *if not, does it mean actual notice is mandatory, in that there must be actual service of the notice on the defendant.*

Before deliberating on the appeal, I had to consciously remind myself that this was an appeal emanating from a setting aside application for the default judgment of 52–234–1997, and not of 73–19–1994. In spite of this awareness, I was placed in a rather awkward position as the defendant had invoked the protection of s 96(2)(a) [RTA]. In gist, the defendant claimed that the default judgment obtained in 73–19–1994 was unenforceable against itself as it had no notice of the proceedings. In the event the court accepts that assertion, then the default judgment was in jeopardy. Regardless of the outcome to the defendant, that order as against Zakaria remains unscathed and thus remained good as against him. It therefore follows that if the judgment of 73–19–94 were found to be unenforceable against the defendant, primarily on the pretext of it not having had notice of the proceedings, then the subsequent default judgment of 52–234–97 would also invariably be unenforceable against it.

At the end of the hearing, I dismissed the appeal in spite of the invocation of s 96(2)(a) by the defendant …

…

Deciphering the above s 96(2)(a), to fall within the ambit of it, these following ingredients among others must be present, namely:

(1) a proceeding did take place;

(2) a judgment was obtained in that proceedings;

(3) that judgment involved a sum of money;

(4) there is a recipient for that sum of money;

(5) an identified insurer is to pay that sum of money;

(6) that insurer is to pay:

(a) unless it had no notice of the proceedings before its commencement, in which the judgment was given; or

(b) the insurer had no notice within seven days after the commencement of the proceedings in which the judgment was obtained.

Having sifted the evidence, ingredients 1–5 certainly were found to be present.

The answer to ingredient 6 above is inextricably connected to the question of whether the notice should be actual or not. To answer it, it is highly pertinent that the words promulgated in the Act be scrutinized carefully, and in its context. By the normal rule of construction, unless there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences (Maxwell on the Interpretation of Statutes (12th Ed)). Perusing s 96(2)(a), the phrase used which is relevant for the current discussion is 'the insurer had notice of the proceedings'. As I interpret it, the language is plain and admits only one interpretation ie that the proceedings had come to the notice of the insurer.

It is undeniable that the provision uses the phrase 'had notice of the proceedings', and not words to the like of 'shall have been served'. In the case of *R v Shurmer* (1886) 17 QBD 323, *on the issue of whether written notice was required, when discussing* s 7 of 30 & 31 Vict C 35, Lord Coleridge CJ said:

It may be that a notice given to a person verbally might produce the effect desired to be secured as well as one in writing, but we are bound by the words of the section, and they are not 'given to' but 'served upon'. I think it would be straining these words to make them equivalent to 'given to'.

In the above case, by virtue of the provisions of s 7, it was quite clear that not only must the notice be served but also in writing. *In our current case, by analogy, no comprehensive steps or details have been provided for by the law, be it in the format, the manner the notice is to be received in or the identity of the sender. It is unlike the Rules of the High Court 1980, where in special circumstances, the documents must be served personally on a particular person, in a peculiar fashion and within a specific time. Another good example where service of notice is required will be s 431 of the National Land Code 1965, where without prejudice to any other method of service, other ways are exemplified that may be actuated.*

Section 96(2)(a) merely provides that the insurer 'had notice of the proceedings'. Its brevity astounds. To impose a burden beyond the intention of the law, primarily the indemnification of a party, or in certain circumstances ensure compensation to an aggrieved party would defeat the very purpose of the legislation. After due prognosis of the provision, I am satisfied that so long as the insurer has notice of the proceedings, be it from a third party or otherwise, it will suffice for purposes of the law (The Law of Motor Insurance by CN Shawcross (2nd Ed) p 299). In the case of Lickiss v Milestone Motor Policies at Lloyds [1966] 2 All ER 972*, to afford protection to the insurers, condition 1 of the insurance policy therein read that 'the insured shall give full particulars in writing'. In spite of that strict requirement that notice be given in writing, Lord Denning MR at p 976 bravely watered it down, when he opined that if the insurer had obtained all the material knowledge from another source, then the right of the aggrieved party could still be saved. To appreciate his full remarks, I reproduce the relevant portion found at p 976, which reads:*

Condition 1 was inserted in the policy so as to afford a protection to the insurers so that they should know in good time about the accident and any proceedings consequent on it. If they obtain all the material knowledge from another source so that they are not prejudiced at all by the failure of the insured himself to tell them, then they cannot rely on the condition to defeat the claim.

With the liberal view propagated by Lord Denning MR, in spite of the specific preconditions imposed in the policy, I find it abhorrent to the very spirit of insurance law, and s 96 (RTA), if a strict and prohibitive interpretation be imposed.

So long as it is sufficiently clear in the mind of the insurer that legal proceedings is impending, such a notice need not necessarily be documentary in form (Re Friedlander, ex p Oastler (1884) 13 QBD 471). No doubt something that is so informal like a casual conversation will not suffice (Herbert v Railway Passengers Assurance Co [1938] 1 All ER 650). In as much as by inference that a written notice may probably be the wisest way to give notice to the insurance company of the proceedings, in a case where the defendant had refused to come forward to assume responsibility, then the above scenario applies ie suffice if it had notice through a third party.

For business efficacy, with regard to notice, normally whatever has been agreed upon between parties will be included in the agreement. Oral notice is even sufficient for purposes of insurance policies unless there is express requirement that notice is to be given in writing (Macgillivray & Parkington on Insurance Law (6th Ed) p 1788). Apart from the above stance, courts in certain circumstances have assisted in mitigating the harshness of certain requirements in an insurance agreement, eg the requirement of the prescribed time to be given to the insurer (Re An Arbitration Between Coleman's Depositories Ltd and the Life and Health Assurance Association [1907] 2 KB 798). Returning to our shores, Peh Swee Chin J in Looi Meng Leong v PP [1991] 1 CLJ 355*, even had occasion to admit a bit of fresh air into insurance law, when he opined that s 96 [RTA] was a catch-all provision against insurers, enacted for the purpose of protecting third parties. How could I not conclude that the combined effect of the above dissertation shows that*

insurance law in general is not to be viewed in prohibitive light against a third party, but rather with sympathy and liberality? To return to the ingredients which were much earlier dissected, and having taken into consideration all the above factors, ingredient 6 therefore must also be answered in the positive in the final analysis.

As to the issue of the evidential burden, the law is clear in that it lies on the aggrieved party, with the level of proof not exceeding that of a civil case. If the court is convinced on the balance of probabilities that the defendant had notice of the proceedings, then that will suffice. Actual service is merely evidential in its effect … (Emphasis added.)

(5) it is decided in the High Court's judgment (Jivarathinam), at [17] to [20] and [23]:

[17] *After considering the cause papers, arguments and authorities cited by counsel, I allowed the declaration sought by the plaintiff. I am of the opinion that a civil suit filed afresh after the earlier civil suit is withdrawn requires a fresh s 96(2)(a) notice to be served on the insurer. Failure to do so would entitle the insurer to seek for and obtain a declaration to avoid satisfying any judgment sum subsequently obtained in the fresh proceedings commenced against the insurer's insured.*

[18] The words of (s 96(2)(a) RTA) are clear and unambiguous. The legislature used of the words 'unless before or within seven days after the commencement of the proceedings' and 'the insurer had notice of the proceedings' clearly requires the statutory notice that is served on the insurer must refer to the specific proceedings that are to be commenced or have been commenced and under which judgment is to be obtained. The critical words is the word 'the' in the provisions. In this regard it is useful to refer to Bindra's Interpretation of Statutes (9th Ed) at pp 1597–1598 where it is stated*:*

'The' is the word used before nouns, with a specifying or particularizing effect as opposed to the indefinite or generalizing force of 'a' or 'an'. It determines what particular thing is meant, that is, what particular thing we are to assume to be meant. 'The' is always mentioned to denote a particular thing or a person (Shri Ishar Alloy Steels Ltd v Jayaswals Naco Ltd [2001] 3 SCC 609).

[19] *In the circumstances, the reliance on the notice dated 1 June 2017 is misconceived. The notice dated 1 June 2017 can only refer to the second civil suit. It does not refer to the third civil suit. The second suit is no more or does not exist after it has been withdrawn. If the third party intends to commence a fresh civil suit or has commenced a fresh civil suit a fresh statutory notice must be issued referring to the said proceedings.*

[20] The words 'notice of the proceedings' would mean the notice of the third civil suit which will be the proceedings in which judgment will be given for the purposes of (s 96(1) RTA). Section 96(2)(a) RTA therefore requires that the insurer is given notice of this particular proceedings and no other. Thus, in the instant case the particular proceedings that must be referred to specifically in the statutory notice is the third suit that is to be filed or has been

filed. The High Court in *Liberty Insurance Berhad v Mohamed Fayadh Abdul Gaffoor & Ors* [2021] MLJU 2427; [2021] 1 LNS 2022 in a similar situation held as follows:

When the first suit was withdrawn the notice dated 22 September 2015 ceased to have effect. In my judgment it is incumbent upon the defendants' solicitors to issue a fresh notice to the plaintiff.

...

Conclusion

[23] *I am satisfied that the plaintiff has met the requirements.* (Emphasis added.)

Regrettably, the learned judicial commissioner's attention in the High Court's judgment (*Jivarathinam*) was not drawn to *Goh Thiam Hock*.

F(4). Cases on s 152(1)(a) of the RTA (UK)

[22] The following three Court of Appeal judgments from UK (in chronology) regarding the construction of s 152(1)(a) RTA (UK) are enlightening:

(1) in *Desouza*:

(a) Cazalet J had decided as follows:

The question which this court has to consider is whether notice in the required statutory form was given through 20 December 1990 letter, which shows the awareness of the respondents of the possibility of proceedings, and the communications of 1 January, 14 January, 24 April and 30 April 1991.

Although Mr Astor has urged upon us that [s 152(1)(a) RTA (UK)] refers specifically to the proceedings in the way I have indicated, I do not consider that that is a construction which can properly be put on the subsection. If one reads the subsection in its entirely it is open to the claimant to give notice before or within seven days after the commencement of proceedings. No time limit is put on the period before the commencement of proceedings during which notice can be given. It must follow as a matter of common sense that at some stage before proceedings are commenced the complainant simply does not know specifically the nature of the proceedings, save that he is to take proceedings for damages, as was said here, in the High Court against the insured.

In that context I do not consider that Mr Astor's construction, supporting the view which what Judge Hunter adopted, is the correct one. In my view notice in any particular case is a matter of fact and degree and will turn on the extent to which the insurer has been made aware of the background circumstances and of the position of the claimant in regard to the taking of proceedings. Such notice can be given orally or in writing. The essential purpose of the requirement of notice is that the insurer is not met with information, out of

A the blue, that his insured has had a judgment obtained against him ... (Emphasis added.)

(b) according to Roch LJ:

B *The requirement is that the insurer have notice of the bringing of the proceedings. That must be something different from the commencement of proceedings, because Parliament has chosen to use the phrase 'the bringing of the proceedings' and the phrase 'the commencement of proceedings' in the same subsection.*

C RTA (UK) does not require notice to be given in writing, nor does it require notice to be given in any particular form. The insurers, through their counsel Mr Astor, argue that the interpretation of this subsection turns on the use of the word 'the' in front of the word 'proceedings', and therefore what has to be given by way of notice to the insurers is notice of the particular proceedings brought by the third party. In my judgment, the subsection is not to be interpreted in that way. As notice of the bringing of proceedings can be given D before those proceedings are commenced, that is to say at a time when the proceedings do not exist, the notice that has to be given to the insurers is information that the third party intends to commence an action against the insurers' insured. Once the insurers have that knowledge there is an onus on them to inform themselves of the precise details of the proceedings.

E *The purpose of the provision is to avoid insurers being asked to satisfy a judgment against their insured in respect of a claim of which they knew nothing obtained in proceedings of which they had no notice or warning.*

...

F ... *However, what amounts to notice of the bringing of proceedings must, in my judgment, depend on the facts and circumstances of each particular case.* (Emphasis added.)

(2) Kennedy LJ gave the following judgment in *Wake v Page & Anor* [2000] G Lexis Citation 4603, at [13] to [16], [25] and [29]:

[13] *In Weldrick v Essex & Suffolk Equitable Insurance Society Ltd (1949) 83 Lloyd's Rep 91 Birkett J was concerned with the same statutory provision.* Nine months before the writ was issued the plaintiff's solicitors wrote to the insurers concerned as follows:

H ...

[14] *The insurers gave confirmation as requested, and the judge said:*

It is very difficult to resist the view that the defendants in those circumstances knew that proceedings would almost inevitably be brought, but I am afraid I cannot quite I *decide it like that.*

[15] *Then, having referred to Herbert's case the judge found the solicitor's letter to be insufficient notice for the purposes of s 10(2) saying:*

What they (the insurers) did have was an intimation that in certain

circumstances proceedings might be brought, but not necessarily that they would be brought. A

[16] *In the light of later authorities I doubt if that decision can stand. Certainly it should be regarded as peculiar to its own facts.*

... B

[25] *The only other decision which it is necessary to cite in relation to this aspect of the matter is Desouza v Waterlow* [1999] RTR 71*, another decision of this court, consisting on this occasion of Roch LJ and Cazalet J ...*

[29] *Pausing there, it seems to me that certain conclusions can be drawn from the authorities:* C

(1) *To show that the insured had notice of the bringing of the proceedings there must be more than evidence of a casual comment to someone who at times acted as an agent for the insurers (see Herbert v RPA Company).*

(2) Any notification relied upon must not be subject to a condition which may or may not be fulfilled (see *Weldrick* and *Harrington*) but if the only condition is one which requires action from the recipients which they choose not to take then by making that choice they render the notice unconditional and thus effective (see *Ceylon Motor Insurance Association Ltd*). D E

(3) *The notice can be oral, and it need not even emanate from the claimant (see Harrington and Desouza). It can be given before proceedings have commenced, and it need not be specific as to the nature of the proceedings, (Desouza) or the court (see Ceylon and Harrington).*

(4) *Whether in any given case it is shown that the insurer had notice of the bringing of the proceedings (as opposed to the making of a claim) is a matter of fact and degree (Desouza).* F

(5) *The essential purpose of the requirement of notice is to ensure that the insurer is not suddenly faced with a judgment which he has to satisfy without having any opportunity to take part in the proceedings in which that judgement was obtained (Desouza).* (Emphasis added.) G

(3) in *Nawaz & Anor v Crowe Insurance Group* [2003] EWCA Civ 316, at [8], Lord Woolf CJ had applied *Desouza* and *Wake*. H

F(5). Our interpretation of s 96(1) and (2)(a) of the RTA

[23] We construe s 96(1) and (2)(a) of the RTA as follows:

(1) even though there is no privity of contract between a claimant and an insurer, by virtue of s 96(1) of the RTA, Parliament has imposed liability ('insurer's statutory liability (s 96(1) of the RTA)') on an insurer to pay a judgment sum obtained by a claimant in a suit against a person insured by the insurer (claimant's suit) based on the commission of the insured's I

tort of negligence which has caused loss and/or damage to the claimant in an incident involving a motor vehicle.

An insurer's statutory liability (s 96(1) of the RTA) is fortified by the Long Title to RTA which states that RTA is 'to make provision for the protection of third parties against risks arising out of the use of motor vehicles'. It is clear that one of the many purposes of RTA is to protect third party claimants by providing for an insurer's statutory liability (s 96(1) of the RTA) — please refer to Federal Court's judgment delivered by Abdul Rahman Sebli FCJ (as he then was) in *AmGeneral Insurance Bhd v Sa' Amran a/l Atan & Ors and other appeals* [2022] 5 MLJ 825, at [165]. According to Hanipah Farikullah JCA (as she then was) in the Court of Appeal case of *Aqmal bin Dakhirrudin v Azhar bin Ahmad & Anor* [2019] MLJU 1554, at [40], RTA is a '*social legislation*' with regard to, among others, an insurer's statutory liability (s 96(1) of the RTA) ('social legislation construction (RTA)');

(2) s 96(2)(a) of the RTA has provided that there can only be an insurer's statutory liability (s 96(1) of the RTA) if a claimant can discharge the evidential burden to prove on a balance of probabilities either one of the following two limbs of s 96(2)(a) of the RTA (two limbs (s 96(2)(a) of the RTA)'):

(a) the claimant has given 'notice of the proceedings' regarding the claimant's suit to the insurer in question before the commencement of the claimant's suit ('first limb (s 96(2)(a) RTA]'); or

(b) the claimant has given to an insurer '*notice of the proceedings*' with regard to the claimant's suit within 7 days from the commencement of the claimant's suit (second limb ('s 96(2)(a) of the RTA)');

(3) premised on:

(a) *Goh Thiam Hock*;

(b) *Desouza*;

(c) *Wake*; and

(d) *Nawaz,*

– the phrase 'notice of the proceedings' in s 96(2)(a) of the RTA must refer to an insurer's *knowledge* of a claimant's suit which may subsequently give rise to the insurer's statutory liability (s 96(1) of the RTA). Accordingly, for an insurer's statutory liability (s 96(1) of the RTA) to be imposed, a claimant has the evidential onus to prove on a balance of probabilities either one of the following two scenarios:

(i) the insurer has knowledge of the claimant's suit *before* the commencement of the claimant's suit as understood in the first limb (s 96(2)(a) of the RTA); *or*

(ii) if the insurer has no knowledge of the claimant's suit before the commencement of the claimant's suit, the insurer has knowledge of the claimant's suit within seven days from the commencement of the claimant's suit — please refer to the second limb (s 96(2)(a) of the RTA);

(4) the object of s 96(2)(a) of the RTA as intended by the legislature is as follows — if an insurer has *knowledge* of a claimant's suit, the insurer is then able to make an informed decision regarding the following matters:

(a) whether the insurer will apply to court to invalidate the insurance policy of the insured;

(b) whether the insurer will exercise a right of subrogation pursuant to the insurance policy and appoint solicitors to act for the insured in the claimant's suit;

(c) whether the insurer will apply to intervene in the claimant's suit as a co-defendant (with the insured) and oppose the claimant's suit as the insurer sees fit; and/or

(d) whether the insurer will settle the claimant's suit,
('object (s 96(2)(a) RTA)').
According to s 2(1)(a) of the Interpretation Acts 1948 and 1967 ('the IA'), Part 1 of the IA applies in the construction of s 96(2)(a) of the RTA. This is because RTA has been enacted after 18 May 1967 as understood in s 2(1)(a) of the IA. Section 17A of the IA (in Part 1 IA) has provided that in the interpretation of a statutory provision, the court 'shall' prefer a construction which 'would promote the purpose or object underlying' the statute in question. As such, in accordance with s 17A of the IA, the court can give effect to the object (s 96(2)(a) of the RTA) and not merely the literal meaning of s 96(2)(a) of the RTA;

(5) as decided in *Goh Thiam Hock*, *Desouza* and *Wake*, so long as an insurer has knowledge of a claimant's suit within the meaning of the first limb (s 96(2)(a) of the RTA) or second limb (s 96(2)(a) of the RTA):

(a) s 96(2)(a) RTA does not require a formal or written notice of a claimant's suit to be served by a claimant on an insurer. In fact, no specific form or format has been prescribed by s 96(2)(a) of the RTA or any other provision in the RTA for a notice of a claimant's suit to be given by the claimant to an insurer pursuant to s 96(2)(a) of the RTA. Neither s 96(2)(a) of the RTA nor any other provision in the RTA has provided for the specific contents or wording of any notice of a claimant's suit to be served by a claimant on an insurer;

(b) oral notice of a claimant's suit may be given by a claimant to an insurer but a 'casual comment' or 'casual conversation' is not sufficient to fulfil either one of the two limbs (s 96(2)(a) of the RTA); and

(c) an insurer may have knowledge of a claimant's suit within the meaning of the two limbs (s 96(2)(a) of the RTA) from a source other than a claimant (third party source). A third party source may include an insured who has informed an insurer of a claimant's suit as understood in either one of the two limbs (s 96(2)(a) of the RTA).

(6) whether an insurer has knowledge of a claimant's suit within the meaning of the two limbs (s 96(2)(a) of the RTA) is a question of fact and degree. In this regard, decided cases on whether insurers have knowledge of claimants' suits within the meaning of the two limbs (s 96(2)(a) of the RTA) depend on the particular facts of those cases and cannot constitute binding precedents from the view point of the *stare decisis* doctrine;

(7) the above interpretation of s 96(1) and (2)(a) of the RTA:

(a) ensures a harmonious construction of s 96(1) and (2)(a) RTA and

(b) is in consonance with the social legislation construction (RTA);

(8) if:

(a) an insurer has knowledge of a claimant's first suit ('claimant's first suit') within the meaning of the first limb (s 96(2)(a) of the RTA) or second limb (s 96(2)(a) of the RTA);

(b) the claimant's first suit is discontinued and is not heard by the court on its merits for any reason whatsoever; and

(c) the claimant subsequently files a second suit against an insured based on the same material facts as the claimant's first suit ('claimant's second suit'),

– there is *no* requirement under the second limb (s 96(2)(a) of the RTA) for the claimant to inform again the insured regarding the claimant's second suit. This is because the claimant has previously fulfilled the first limb (s 96(2)(a) of the RTA), namely, the insurer already has knowledge of the claimant's suit, be it the claimant's first suit or the claimant's second suit (based on the same material facts of the claimant's first suit).

If this court adopts the interpretation of s 96(2)(a) RTA given in C*han Sow Ying*, the High Court's judgment (*Jivarathinam*) and the learned High Court judge in this appeal by requiring a fresh notice of the claimant's second suit to be served by a claimant on an insurer:

(i) this will cause an injustice to claimants and render nugatory the insurer's statutory liability (s 96(1) of the RTA) as expressly conferred by Parliament;

(ii) this is contrary to social legislation construction (RTA); and

(iii) the above construction of s 96(2)(a) of the RTA has gone beyond the object (s 96(2)(a) of the RTA) and allows insurers to circumvent the insurer's statutory liability (s 96(1) of the RTA); and

(9) we take this opportunity to:

(a) affirm *Goh Thiam Hock*; and

(b) overrule *Ng Siak Yow*, *Chan Sow Ying* and the High Court's judgment (*Jivarathinam*).

[24] We have not overlooked s 118(1) of the RTA as contended by Ms Imavathi. Section 118(1) of the RTA provides as follows:

> Service of notices
>
> s 118(1) *Any notice required to be given or served under this Act, may, unless some other form of service is prescribed, be served on the person affected thereby as follows:*
>
> (a) *by giving the original copy of the notice personally to such person*;
>
> (b) by affixing a copy of the notice on any conspicuous part of the house or any other place such person usually resides;
>
> (c) by affixing a copy of the notice on any conspicuous part of such person's motor vehicle; or
>
> (d) by sending the notice through registered post. (Emphasis added.)

We unhesitatingly decide that s 118(2) of the RTA has no relevance in this appeal because:

(1) as explained in the above sub-paras 23(1) to (5), (7) and (8), an insurer may have knowledge of a claimant's suit by way of oral notice by a third party source and in this manner, either one of the two limbs (s 96(2)(a) of the RTA) may be fulfilled by the claimant; and

(2) s 118(1) of the RTA is not a mandatory provision. This is clear from the employment of a permissive term '*may*' by the legislature in s 118(1) of the RTA.

G. OUTCOME OF THIS APPEAL

[25] In view of our interpretation of ss 96(1) and 96(2)(a) RTA, the learned High Court judge had clearly committed an error of law which:

(1) has caused an injustice to the defendants; and

(2) warrants appellate intervention in this appeal.

[26] In this case, by way of the plaintiff's acknowledgement of receipt (first

A defendant's notice (first suit)), the plaintiff had actual knowledge of the first suit or any other suit which may be subsequently filed against the insured. In fact, the plaintiff had appointed Messrs HSS to act for the insured in the first suit and Messrs HSS had filed a defence for the insured in the first suit. It is clear that the defendants had fulfilled the first limb(sn 96(2)(a) of the RTA). Hence,
B the High Court should not have granted the declaration in the OS.

[27] Premised on the above reasons, this appeal is allowed with the following order:

C (1) the OS is dismissed;

(2) the High Court decision is set aside; and

(3) the plaintiff shall pay costs of RM20,000 to the defendants here and below (subject to allocatur fee).

D

[28] In closing, it is hoped that the insurer's statutory liability (s 96(1) of the RTA) is not circumvented when an insurer already has knowledge of a negligence suit which may be filed by a claimant against an insured as understood in the first limb (s 96(2)(a) of the RTA).

E

Appeal allowed; OS dismissed; High Court's decision set aside with costs of RM20,000 to be paid by plaintiff to defendants here and below (subject to allocatur fee).

F Reported by Dzulqarnain Ab Fatar

G

H

I